

INTERNAL USE ONLY

10 May 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Constituent Request for [REDACTED] OUO Material

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STATSPEC 1. This memorandum is prompted by the handling of a constituent request to Senator Buckley for [REDACTED] Official Use Only material under the Freedom of Information law. For the time being, the issue has been side-stepped with the cooperation of Senator Buckley's office.

STATSPEC 2. [REDACTED] Associate General Counsel, believes the Agency would not succeed in a court test over the issue under the so-called Freedom of Information Act (5 U.S.C. 552). Further, Agency regulations on 5 U.S.C. 552 specifically state that information marked "For Official Use Only" is not to be denied to the public under the first exemption of the Act: "(b)(1) Specifically requiring by Executive order to be kept secret in the interest of the national defense or foreign policy;".

3. However, Agency regulations on the Freedom of Information Act appear to be in conflict with 51-8 f(3) which states that the OUO control marking is a "dissemination limitation." If information marked "Official Use Only" is not to be denied to "any person" under exemption (b)(1) of the Freedom of Information Act, it is difficult to conceive how its dissemination can be limited under H. R. 51-8 with any sanction of authority. Perhaps "OUO" information could be found to be protected information under Agency authorities in a manner which would be covered under an exemption under the Freedom of Information Act, such as (b)(3).

STATSPEC 4. These matters are not for resolution by the Office of Legislative Counsel, but we have an important stake in maintaining our credibility with congressional offices. For some time we have held the line against releasing [REDACTED] OUO material to members of Congress for constituents. Although such requests perhaps are not technically under the letter of the Freedom of Information law, they certainly fall within its spirit and congressional offices have relied upon our judgment that this information is somehow properly outside the pale of public scrutiny. We even ask the congressional committees and offices that receive the [REDACTED] OUO material to treat it with confidence and handle it like they would other protected material. Recently we turned

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down a request from Representative Pierre duPont (R., Del.) for the OUO [REDACTED] to be used in a course in Latin American studies at the University of Delaware. It is difficult to square this result with the probable administrative outcome of the request from Senator Buckley's constituent if he presses the matter.

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[REDACTED]  
Assistant Legislative Counsel

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14. (Internal Use Only - LLM) Called Susan Smith, in the office of Senator James Buckley (R., N. Y.), to transfer action on a request from the Senator to the Department of State concerning [REDACTED] and the Freedom of Information Act. [REDACTED] and [REDACTED] OGC, are working on the problem which involves a request by Mr. Albert C. Moore for the text of a communication between Hanoi and Paris which sets forth a series of questions submitted by Mr. A. M. Rosenthal, Managing Editor of The New York Times, to Hanoi concerning Hanoi's terms for ending the war and releasing U. S. POW's.

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15. (Unclassified - LLM) Jane Engel, in the office of Senator Charles Mathias (R., Md.), called and said that she was considering drafting legislation which would prohibit the Agency and other Federal agencies from employment discrimination based upon certain physical disabilities and in this connection wanted to know if the Agency was subject to the recent Equal Employment Opportunity amendments. I explained our situation under the recent amendments and told her that the Agency did have certain unique requirements and that employees generally had to have the physical ability to be able to provide proper protection for classified information, which she seemed to appreciate. She said that what had prompted this matter was a report by a constituent who said the Agency had turned him down because of a specific physical disability. I told her that it is normally not our policy to indicate to applicants why they have not been employed and that if she wished to give me the name of the individual I would be happy to check out the facts. Miss Engel said she would speak further with the constituent and might be back in touch.

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[REDACTED]  
JOHN M. MAURY  
Legislative Counsel

STATINTL cc:  
ER O/DDCI

[REDACTED]  
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